

1 STANLEY E. KEEN
Regional Solicitor
2 ROBERT M. LEWIS, JR.
Counsel for ERISA
3 DANE L. STEFFENSON
GA Bar No. 677780
4 Trial Attorney
Office of the Solicitor
5 UNITED STATES DEPARTMENT OF LABOR
61 Forsyth St., Room 7T10
6 Atlanta, Georgia 30303
Telephone (404) 302-5435
7 Fax (404) 302-5438
Email: Steffenson.dane@dol.gov

8 Attorneys for Petitioner,
9 United States Department of Labor

10 UNITED STATES DISTRICT COURT FOR
11 THE NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 ELAINE L. CHAO, Secretary) Case No.
of Labor, UNITED STATES)
14 DEPARTMENT OF LABOR,)
)
15 Petitioner,) MOTION FOR EXPEDITED HEARING
)
16 v.)
)
17 MATTHEW J. DONNELLY d/b/a/ The)
BUSINESS APPRAISAL INSTITUTE,)
18)
Respondents.)
19)

20 PETITIONER, Elaine L. Chao, Secretary of Labor, United
21 States Department of Labor, hereby files this Motion for
22 Expedited Hearing, to request an expedited hearing on her
23 Petition to Enforce Administrative Subpoena Duces Tecum Issued
24 by the Employee Benefits Security Administration ("EBSA"), which
25 has been filed contemporaneously herewith.

26 On March 13, 2008, EBSA issued an Administrative Subpoena
27 Duces Tecum ("Subpoena") to Matt Donnelly and the Business
28

1 Appraisal Institute ("BAI") to produce documents relevant to
2 EBSA's Atlanta Regional Office's ongoing investigation of the
3 Bruister & Associates Employee Stock Ownership Plan (the "ESOP")
4 and Bruister & Associates Eligible Individual Account Plan (the
5 "EIAP")(collectively, the "Plans"), including service providers
6 and others related to the Plans, being conducted pursuant to
7 ERISA § 504(a), 29 U.S.C. § 1134(a), to determine whether any
8 person has violated or is about to violate any provision of
9 Title I of ERISA or any regulation or order promulgated
10 thereunder. Respondents have acknowledged receipt of the
11 Subpoena on March 24, 2008, but have refused to comply with the
12 Subpoena.

13 EBSA's on-site investigation of the Plans began on March
14 26, 2007. The investigation involves, among other things,
15 transactions in which the ESOP purchased employer securities
16 beginning December 30, 2002. Section 413 of ERISA, 29 U.S.C. §
17 1113, requires that fiduciary breaches resulting in violations
18 of ERISA be brought within six years of the breach. Thus, using
19 the most conservative analysis, EBSA may be required to complete
20 its investigation, submit the case to the Department of Justice
21 for approval, and then file the case in the next four months.
22 As discussed in the Secretary's Petition and Memorandum in
23 Support, the documents requested by the Subpoena are essential
24 to EBSA completing its investigation. Respondents' utter
25 failure to comply with the Subpoena severely prejudices the
26 Secretary's investigation and carry out her statutory
27 obligations in this matter. Because of the identified time
28

1 considerations, the Secretary respectfully requests an expedited
2 hearing on the Petition to Enforce Administrative Subpoena Duces
3 Tecum. As stated in the Certificate of Service, a copy of this
4 Motion along with the Secretary's Petition to Enforce
5 Administrative Subpoena, Memorandum in Support, and proposed
6 order have been served on Respondents' counsel, who stated he
7 was authorized to accept service.

8
9 GREGORY F. JACOB
Solicitor of Labor

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11 STANLEY E. KEEN
Regional Solicitor

12 ROBERT M. LEWIS, JR.
Counsel for ERISA

13
14 By: _____
DANE L. STEFFENSON
Trial Attorney

15
16 SOL Case No. 08-60050

Attorneys for Petitioner
U.S. Department of Labor